

# Shainis & Feltzman, Chartered

Counselors at Law

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1901 I Street, N.W.  
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(202) 293-0011

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March 10, 2000

Aaron B. Shainis  
Lee J. Feltzman

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
Portals II - 12<sup>th</sup> Street Lobby  
Filing Counter - TW-A325  
445 - 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Of Counsel

William H. BuRoss, III  
Ruth S. Baker-Battist  
Robert J. Keller

RECEIVED  
MAR 13 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

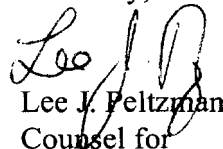
Re: MM Docket Nos. 99-140 and 99-146  
RM-9490  
RM 9723  
RM-9724  
RM 9725  
Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
North Tunica, Mississippi  
Kennett, Missouri  
Munford, Tennessee  
Friars Point, Mississippi  
Marianna, Arkansas

Dear Ms. Salas:

Transmitted herewith, on behalf of Legend Broadcasting, Inc. and Ken Reynolds d/b/a Bear Creek Radio, is an original and four (4) copies of their Request for Approval of Withdrawal of Bear Creek Radio in the above-referenced rulemaking proceedings. Attached to that Request is a Declaration from Bear Creek Radio requesting the withdrawal of its Counterproposal for Mariana, Arkansas.

Please contact the undersigned in the event the Commission has any questions with respect to the Bear Creek Radio Withdrawal.

Sincerely,

  
Lee J. Feltzman  
Counsel for

LEGEND BROADCASTING, INC.

No. of Copies rec'd 0+4  
List ABCDE

Enclosure

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket Nos. 99-140 and 99-146
Table of Allotments,	)	RM-9490
FM Broadcasting Stations.	)	RM-9723
(North Tunica, Mississippi,	)	RM-9724
Kennett, Missouri	)	RM-9725
Munford, Tennessee,	)	
Friars Point, Mississippi and	)	
Marianna, Arkansas)	)	

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REQUEST FOR APPROVAL OF WITHDRAWAL**

Legend Broadcasting, Inc. ("Legend") and Ken Reynolds d/b/a Bear Creek Radio ("BCR"), by their respective attorneys, pursuant to Section 1.420(j) of the Commission's rules, hereby submits this request for approval of the withdrawal by BCR of its request that its Counterproposal in the above-captioned docket be dismissed with prejudice and that Legend's proposal be granted. In support of this request, the following is submitted.

1. Docket No. 99-140 was initiated by Legend and proposed the reallocation of Channel 255C from Kennett, Missouri to Keiser, Arkansas, and the modification of Station KTMO(FM)'s license accordingly. Legend filed a Counterproposal in that proceeding proposing the allotment of Channel 255C from Kennett, Missouri to Munford, Tennessee, and the modification of the station license as well as the allotment of Channel 254A to the community of

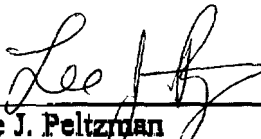
Friars Point, Mississippi. BCR filed a Counterproposal in MM Docket No. 99-146, proposing the allotment of Channel 254A to Marianna, Arkansas. Fred Flinn ("Flinn") initiated MM Docket No. 99-146, proposing the allotment of Channel 254A to North Tunica, Mississippi. However, Flinn has subsequently requested the withdrawal of his proposal. The proposals for North Tunica and Marianna are mutually-exclusive with the proposals for Munford and Friars Point.

2. As noted, Flinn has already sought the withdrawal of his North Tunica proposal. BCR has agreed to withdraw its Counterproposal for Marianna. Legend has entered into a Settlement Agreement with BCR and agreed to reimburse BCR's reasonable and legitimate expenses relating to the preparation, filing and prosecution of its Counterproposal. See Attachment A (Settlement Agreement between Legend and BCR). BCR has executed a Declaration requesting the withdraw of its Counterproposal and certifying that it has not received nor will it receive consideration in excess of its legitimate and prudent expenses in exchange for the withdrawal of its Counterproposal. See Attachment B. Legend has also submitted a Declaration certifying that it has not paid nor will it pay consideration to BCR in excess of its legitimate and prudent expenses for the withdrawal of its Counterproposal. See Attachment C. Thus, this Request and its attachments demonstrate compliance by the parties with Section 1.420 of the Commission's rules.

WHEREFORE, in light of the foregoing, it is respectfully requested that this Request be granted, the Counterproposal for Marianna, Arkansas filed by BCR be withdrawn, and the Counterproposal filed by Legend for the reallocation of Channel 255C from Kennett, Missouri to Munford, Tennessee and the concurrent modification of Station KTMO(FM)'s license, and the allotment of Channel 254A to Friars Point, Mississippi be granted.

Respectfully submitted,  
LEGEND BROADCASTING, INC.

By:

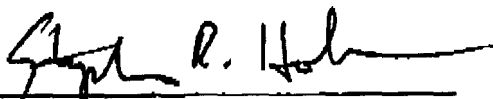
  
\_\_\_\_\_  
Lee J. Peltzman  
Its Attorney

SHAINIS & PELTZMAN, CHARTERED  
1901 L Street, N.W. - Suite 290  
Washington, D.C. 20036  
202 293 0011

March 8, 2000

BEAR CREEK RADIO

By:

  
\_\_\_\_\_  
Stephen R. Hollas  
Its Attorney

HORLEN, HOLT & HOLLAS, P.L.L.C.  
2700 Earl Rudder Freeway South, Suite 5300  
College Station, TX 77845  
979 696 1923

March 8, 2000

**EXHIBIT A**

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("Agreement") is made and entered into this 9<sup>th</sup> day of March, 2000, by and between **LEGEND BROADCASTING, INC.** ("Legend") and **KEN REYNOLDS dba BEAR CREEK RADIO** ("BCR"), together referred to as the "Parties."

WITNESSETH:

**WHEREAS**, Legend has filed proposals with the Federal Communication Commission ("FCC" or the "Commission") in MM Docket 99-140 and MM Docket 99-146 to reallocate Channel 255C from Kennett, Missouri, to Munford, Tennessee, and allocate Channel 254A to Friars Point, Mississippi; and

**WHEREAS**, BCR has filed a Counterproposal ("Counterproposal") in MM Docket 99-146 proposing the allocation of Channel 254A to Marianna, Arkansas; and

**WHEREAS**, these proposals are mutually exclusive with each other so that the proposals of Legend or the proposal of BCR may be approved by the FCC; and

**WHEREAS**, BCR agrees that the allocation of Channel 254A to Friars Point, Mississippi, and Channel 255C to Munford, Tennessee, would better serve the public interest; and

**WHEREAS**, BCR agrees to withdraw and otherwise request dismissal of his proposal; and

**WHEREAS**, the Parties believe that the FCC's rules provide for and that the FCC encourages settlements of allocation proceedings among mutually exclusive proponents in order to allow the initiation of new broadcast service to the public at the earliest possible date and to conserve the FCC's resources; and

**WHEREAS**, the Parties desire to further the FCC's objectives by entering into this Agreement, which will resolve the mutual-exclusivity between their allocation proposals, and

**WHEREAS**, the Counterproposal of BCR was not filed for the purpose of entering into a Settlement Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual promises contained herein, the Parties agree as follows:

1. Simultaneously with the execution of this Agreement

A. The Parties shall execute and file with the FCC the joint request for approval of this Agreement attached hereto as **Exhibit "A"**. The joint request shall be accompanied by a copy of the executed Agreement as well as other supporting documentation required by Section 1.420(1) of the Commission's rules, including but not limited to an executed copy of the Declaration attached hereto as **Exhibit "B"**; and

B. Legend shall, within three (3) business days after its receipt of this Agreement executed by BCR and prior to filing this Agreement with the FCC, pay to BCR Twenty-Five Thousand and No/100 Dollars (\$25,0000.00) ("Expense Reimbursement Funds") as reimbursement of BCR's expenses incurred in the preparation, filing, and prosecution of BCR's expenses in connection with the Counterproposal and this Agreement.

2. Each party hereto agrees to cooperate with the FCC by expeditiously providing each other or the FCC with any additional information which reasonably would be required and by doing all other acts reasonably necessary to effectuate the objectives of this Agreement.

3. In addition to any remedy at law or in equity to which a Party hereto may be entitled upon breach of this Agreement, the Parties may initiate actions for the specific enforcement of this Agreement.

4. Any notice required hereunder shall be in writing, and any payment, notice or other communication shall be deemed given when delivered, personally, or mailed by next day delivery or by certified or registered mail, postage pre-paid, with return receipt requested to the following addresses:

For Legend:                Legend Broadcasting, Inc.  
980 North Michigan Avenue, Suite 1.880  
Chicago, IL 60611  
ATTN: Chris Devine

With a copy to:        Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1901 L Street, N.W., Suite 290  
Washington, DC 20036

For BCR:                Bear Creek Radio  
P.O. Box 11196  
College Station, TX 77842  
ATTN: Ken Reynolds

With a copy to:        Stephen R. Hollas  
Horlen, Holt & Hollas, PLLC  
2700 Earl Rudder Frwy. South  
Suite 5300  
College Station, TX 77845

Either Party hereto may change its above address by written notice to the Party in the manner provided this paragraph.

5. Failure of any party to complain of any act of omission on the part of the other Party in breach of this Agreement, no matter how long the same continues, shall not be deemed to be a waiver by said Party of any of its rights hereunder. Any waiver by either Party of any of its rights hereunder shall be specific and in writing. No waiver by any Party at any time, express or implied,

of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

7. This Agreement shall be binding and shall inure to the benefit of the Parties to it and their respective heirs, legal representatives, successors, and assigns.

8. This Agreement represents the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings or agreements among them, whether written or oral, with respect to such subject matter, and the Agreement may not be amended, modified, or terminated except by written instruments signed by each Party hereto.

9. Each Party hereto expressly warrants that it has the full power and authority to enter into this Agreement and execute the same, and that there is no constraint upon such Party's legal authority to perform its obligations hereunder.

10. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on the Parties hereto, notwithstanding that the Parties are not signatory to the same original or the same counterpart.

11. Legend hereby releases BCR and BCR hereby releases Legend from any and all claims, demands, controversies, actions, or causes of action of any kind whatsoever, at common law, statutory or otherwise, in any way arising out of or incident to the FCC Petition or the Counterproposal, it being intended to release all claims of any kind which they may have against each other.

12. Pursuant the FCC's review and approval process of this Agreement, the FCC will review the Declaration and BCR's expense reimbursement request. If the FCC fails to approve any part of such expense reimbursement request, then BCR agrees to refund to Legend within three (3) business days that portion of the Expense Reimbursement Funds that are not approved by the FCC.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates specified below.

Legend:

LEGEND BROADCASTING, INC.,  
a Illinois corporation

Dated: February/March 6, 2000

By: Scott M. Krusinski  
Name: SCOTT M. KRUSINSKI

Settlement Agreement

Page 3



MAR 06 '00 (MON) 15:06 SHAINIS & PELTZMAN  
MAR. 3.2000 11:23am

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PAGE 9/15

NO.009 P.5

Title: PRESIDENT

Legend's Federal Employment Identification Number: 36-419-5186

BCR:

Dated: February/March \_\_, 2000

Ken Reynolds dba Bear Creek Radio

BCR's Federal Employment Identification Number: 459-39-7243

Settlement Agreement

Page 4

Mar 6 2000 14:16 P.08

Fax: 312-587-9520

BCR:

Dated: March 9, 2000

  
\_\_\_\_\_  
**Ken Reynolds** dba Bear Creek Radio

BCR's Federal Employment Identification Number: 459-39-7243

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
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TO: Chief, Allocations Branch  
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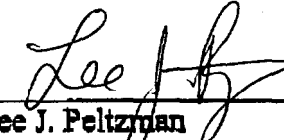
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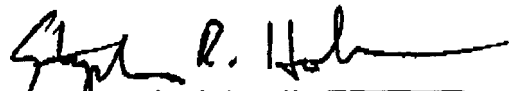
Respectfully submitted,  
LEGEND BROADCASTING, INC.

By:

  
\_\_\_\_\_  
Lee J. Peltzman  
Its Attorney

BEAR CREEK RADIO

By:

  
\_\_\_\_\_  
Stephen R. Hollas  
Its Attorney

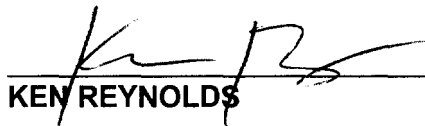
**EXHIBIT B**

## Declaration

I, **KEN REYNOLDS** hereby declare upon penalty of perjury that the following is true and correct to the best of my knowledge and belief. I am a principal of Bear Creek Radio ("BCR"). On June 28, 1999, BCR submitted a Counterproposal in MM Docket 99-146 for Channel 254A at Marianna, Arkansas. BCR hereby withdraws its expression of interest in the allotment old Channel 254A to Marianna, Arkansas, and otherwise requests the dismissal of its Counterproposal in MM Docket 99-146.

I hereby certify that neither BCR nor any of its principals has received nor will they receive any money or other consideration in excess of the legitimate and prudent expenses incurred in the preparation, filing, and prosecution of its expression of interest in this rule making.

Dated: March 9, 2000

  
KEN REYNOLDS

## **EXHIBIT C**



**DECLARATION**

I, SCOTT KRUSINSKI, hereby declare upon penalty of perjury that the following is true and correct to the best of my knowledge and belief. I am a President of Legend Broadcasting, Inc. ("Legend"). Legend has agreed to reimburse Bear Creek Radio for its legitimate and prudent expenses incurred in the preparation, filing and prosecution of its expression of interest in a counterproposal filed for Channel 254A at Marianna in MM Docket 99-146. Legend has also agreed to reimburse Olvie B. Sisk for his legitimate and prudent expenses incurred in the preparation, filing and prosecution of his expression of interest in a counterproposal filed for Channel 254A at North Tunica, Mississippi in MM Docket 99-146.

I hereby certify that neither Legend nor any of its principals has paid nor promised to pay any money or other consideration to Mr. Sisk or Bear Creek Radio or any of its principals in excess of their legitimate and prudent expenses incurred in the preparation, filing and prosecution of their expressions of interest in this rule making. Moreover, there are no oral agreements relating to the dismissal or withdrawal of their expressions of interest.

Dated: March 6, 2000

  
SCOTT KRUSINSKI, President  
Legend Broadcasting, Inc.